



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 2, 1995

Ms. Beverly Luna  
Senior Staff Attorney  
Texas Parks and Wildlife Department  
4200 Smith School Road  
Austin, Texas 78744

OR95-1034

Dear Ms. Luna:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 35377.

The Texas Parks and Wildlife Department (the "department") received a request for three categories of documents relating to the requestor's client's application for employment with the department. You claim that the requested information is excepted from disclosure under section 552.103(a) of the Government Code. You have submitted to this office for review a sample of the documents requested.<sup>1</sup> We have considered the exception you claimed and have reviewed the sample documents.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The department has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The department must meet both prongs of this test for information to be excepted under section 552.103(a).

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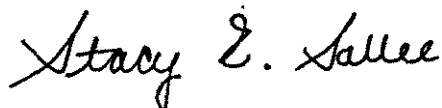
<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You have submitted to this office a complaint filed with the Texas Commission on Human Rights in which the requestor's client complains that he was discriminated against by the department. You also state that the department and the requestor's client recently attended a mediation that was unsuccessful. This office has previously held that a pending complaint before the Equal Employment Opportunity Commission indicates a substantial likelihood of potential litigation. Open Records Decision Nos. 386 (1983), 336 (1982), 281 (1981). We believe that for the same reasons the same is true of a complaint pending before the Texas Commission on Human Rights. Therefore, the department has met the first prong of the section 552.103(a) test. We conclude that the submitted documents relate to the anticipated litigation. Therefore, with the exceptions set out in this ruling, the department may withhold from required public disclosure the requested documents under section 552.103(a).

We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). There is at least one document submitted to this office, a press release, that appears to have been publicly released. The department may not withhold this document. See Gov't Code § 552.007 (prohibiting selective disclosure of public documents). In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/rho

Ref.: ID# 35377

Enclosures: Submitted documents

cc: Mr. Dan T. Sorrells  
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(w/o enclosures)